

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "SMC" BENCHES, MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य
Before Shri Joginder Singh, Judicial Member**

**ITA No.5079/Mum/2017
Assessment Year: 2010-11**

Bhavik Rajesh Khandhar Share & Stock Brokers Pvt. Ltd., 278, Jeevan Udyog Bldg., 2 nd Floor, D.N. Road, Fort, Mumbai – 400 001.	बनाम/ Vs.	DCIT, Range – 4(1), Mumbai.
(निर्धारिती / Assessee)		(राजस्व /Revenue)
P.A. No. AAACB 9797 Q		

निर्धारिती की ओर से / Assessee by	Shri Dilip Lakhani – Sr. Adv.
राजस्व की ओर से / Revenue by	Ms. N. Hemalatha - DR

सुनवाई की तारीख / Date of Hearing :	13/02/2018
आदेश की तारीख /Date of Order:	13/02/2018

आदेश / O R D E R

The assessee is aggrieved by the impugned order dated 12/05/2017 of the ld. First Appellate Authority, Mumbai. The only ground agitated by the ld. counsel for the assessee is with respect to confirming the addition of Rs. 2,45,340/- invoking

the provisions of section 40(a)(ia) of the Income Tax Act, 1961 (hereinafter the Act).

2. During the hearing, the ld. counsel for the assessee Shri Dilip Lakhani contended that the assessee made the payments to M/s. Rajesh Enterprises, being the reimbursement of expenditure incurred by M/s. Rajesh Enterprises on behalf of the assessee and there was no obligation upon the assessee to deduct tax at source on reimbursement of expenditure. It was pleaded that M/s.Rajesh Enterprises actually recovered the expenses from the assessee. My attention was invited to page No. 38 of the paper book containing a debit note of Rs.2,28,000/-, which has been included in the balance sheet 31/03/2011 (page No. 36 of the paper book) in its income and expenditure account. My attention was further invited to page No. 30 of the paper book, letter dated 21/10/2013 containing the details of expenses amounting to Rs.2,28,000/- addressed to the DCIT by the assessee. It was further contended that the payee to whom the payment was made he offered income and paid taxes. This claim of the assessee was not controverted by the Revenue, but it was added that the appeal may be

sent to the file of the ld. Assessing Officer to examine the claim of the assessee. Considering the totality of facts and since the addition has been made of Rs. 2,45,340/- on which no TDS was deducted and the provision of section 40(a)(ia) was invoked, whereas in the debit note the income has been mentioned at Rs. 2,28,000/-, therefore, in fitness of things I am of the view that it needs examination at the level of the ld. Assessing Officer. The assessee be given opportunity to substantiate his claim. Thus, the appeal of the assessee is allowed for statistical purposes.

Finally, the appeal of the assessee is allowed for statistical purposes.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 13/02/2018.

Sd/-
(Joginder Singh)
न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 13/02/2018

V. P.S. नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai